

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

EMELDO CRUZ-GOMEZ,

Plaintiff,

V.

UNION COUNTY JAIL WARDEN,
et al.,

Defendants.

Civil Action No. 10-5538 (CCC)

O R D E R

The Court having considered Plaintiff's application to proceed in forma pauperis and file the complaint without prepayment of fees pursuant to 28 U.S.C. § 1915; and the Court having screened the Complaint to determine whether dismissal is warranted pursuant to 28 U.S.C. §§ 1915(e)(2) and 1915A;

It is on this 6th day of January, 2012;

ORDERED that Plaintiff may proceed in forma pauperis without prepayment of the \$350.00 filing fee pursuant to 28 U.S.C. § 1915(a) and (b); and it is further

ORDERED that the Clerk of the Court is directed to file the Complaint in the above-captioned action; and it is further

ORDERED that the Clerk of the Court shall serve a copy of this order by regular mail on the Attorney General for the State of New Jersey and on the warden of the Southern State Correctional Facility; and it is further

ORDERED that Plaintiff is assessed a filing fee of \$350.00 and shall pay the entire filing fee in the manner set forth in this

order pursuant to 28 U.S.C. § 1915(b)(1) and (2), regardless of the outcome of the litigation; and it is further

ORDERED that in each month that the amount in Plaintiff's account exceeds \$10.00, until the \$350.00 filing fee is paid, the agency having custody of the Plaintiff shall assess, deduct from Plaintiff's account, and forward to the Clerk of the Court payment equal to 20% of the preceding month's income credited to Plaintiff's account, pursuant to 28 U.S.C. § 1915(b)(2), and each payment shall reference the civil docket number of this action; and it is further

ORDERED that Plaintiff's excessive force claims against Defendants Smith and Cesaro, and the John Doe Defendants, will be permitted to proceed; and it is further

ORDERED that the Clerk of the Court shall issue the summons, and the United States Marshal shall serve a copy of the Complaint, summons, and this Order upon the Defendants Smith and Cesaro pursuant to 28 U.S.C. § 1915(d), with all costs of service advanced by the United States; and it is further

ORDERED that the Defendants Smith and Cesaro shall file and serve a responsive pleading within the time specified in Federal Rule of Civil Procedure 12, pursuant to 42 U.S.C. § 1997e(g)(2); and it is further

ORDERED that, pursuant to 28 U.S.C. § 1915(e)(1) and § 4(a) of Appendix H of the Local Civil Rules, the Clerk shall notify the

Plaintiff of the opportunity to apply in writing to the assigned judge for the appointment of pro bono counsel in accordance with the factors set forth in Tabron v. Grace, 6 F.3d 147 (3d Cir. 1993), cert. denied, 510 U.S. 1196 (1994), which sets forth the requirements for eligibility for appointment of pro bono counsel. Plaintiff is advised that such appointment is not automatic; and it is further

ORDERED that the Clerk shall enclose with such notice a copy of Appendix H and a form Application for Appointment of Pro Bono Counsel; and it is further

ORDERED that, if at any time Plaintiff seeks the appointment of pro bono counsel, pursuant to Fed. R. Civ. P. 5(a) and (d), Plaintiff shall (1) serve a copy of the Application for Appointment of Pro Bono Counsel by regular mail upon each party at his last known address, or, if the party is represented in this action by an attorney, upon the party's attorney at the attorney's address, and (2) file a Certificate of Service with the Application for Pro Bono Counsel; and it is further

ORDERED that Plaintiff's remaining claims against the remaining Defendants shall be dismissed, without prejudice, pursuant to 28 U.S.C. §§ 1915(e)(2)(B)(ii) and 1915A(b)(1), for failure to state a claim upon which relief may be granted.

Within forty-five days from the date this Order is entered, Plaintiff may move to reopen his case as to these Defendants,

attaching to any such motion a proposed amended complaint which addresses the deficiencies of the Complaint as stated in the Opinion accompanying this Order.

s/Claire C. Cecchi
CLAIRE C. CECCHI
United States District Judge